

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

TRAVIS ALLEN BUSH,

Appellant.

DOCKET NUMBER WD73738

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 24, 2012

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Jodie C. Asel, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
John M. Reeves, Assistant Attorney General
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Attorneys for Respondent,

Erika R. Eliason, Assistant Public Defender
Columbia, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **April 24, 2012**
TRAVIS ALLEN BUSH,)
)
Appellant.)

WD73738

Boone County

Before Division Two Mark D. Pfeiffer, Presiding Judge, and Karen King Mitchell and
Judges: Gary D. Witt, Judges

Travis Allen Bush (“Bush”) appeals the judgment of his conviction, following a jury trial in the Circuit Court of Boone County, Missouri (“trial court”), of the class C felony of stealing, for which Bush was sentenced by the trial court to eight years’ imprisonment as a prior and persistent offender. Bush asserts two claims on appeal. First, Bush asserts that the trial court abused its discretion in overruling his motion to suppress the victim’s out-of-court identification and in admitting over objection her in-court identification of him. He contends that the identification procedure was so suggestive that it created a substantial risk of misidentification, causing the victim’s identification to be rendered unreliable. Second, Bush asserts that the trial court erred in refusing Bush’s proffered jury instruction on the reliability of eyewitness testimony modeled after Eighth Circuit Pattern Instruction 4.08 on eyewitness testimony, which was derived from *United States v. Telfaire*, 469 F.2d 552 (D.C. Cir. 1972).

AFFIRMED.

Division Two holds:

1. Bringing a victim to the scene of a crime or to the scene of an arrest to observe a suspect shortly after the perpetration of the crime is an approved witness identification procedure. This procedure will be deemed unduly suggestive only where the witness makes the identification in response to the suggestions or encouragement of the police, rather than on his or her own observation and visual recollection of the defendant’s appearance. In this case, the

witness used her own observation and visual recollection of Bush's appearance to identify Bush. Under these circumstances, the identification was not impermissibly suggestive, and the trial court did not err in denying Bush's motion to suppress.

2. Bush failed to show that the mandated MAI-CR3d 302.01 instruction given by the trial court did not adequately address his defense theory of witness misidentification. The Note on Use 3 for MAI-CR3d 302.01 (9-1-08) *prohibits* the giving of any other or additional instruction regarding the "believability of witnesses, or the effect, weight or value of their testimony." Thus, the trial court did not err in refusing Bush's proffered *Telfaire* instruction.

Opinion by: Mark D. Pfeiffer, Presiding Judge

April 24, 2012

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